MONTANA LEGISLATIVE HISTORY

Chapter 210 1985

Bill H _____ S 269 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 15	✓ C	Hearing Date(s)	Feb 11	✓ C
	_____	____C		Feb 12	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Mar 15	✓ C		Feb 12	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	4/04	3RD READING AMENDMENTS CONCURRED	50	0
	4/11	SIGNED BY PRESIDENT		
	4/11	SIGNED BY SPEAKER		
	4/12	TRANSMITTED TO GOVERNOR		
	4/15	SIGNED BY GOVERNOR		
		CHAPTER NUMBER 470 EFFECTIVE DATE: 10/01/85		

SB 267 INTRODUCED BY HALLIGAN
GIVE UNMARRIED PERSON SAME EXEMPTIONS FROM EXECUTION OF JUDGMENT AS MARRIED

	1/28	INTRODUCED		
	1/29	REFERRED TO JUDICIARY		
	2/11	HEARING		
	2/12	COMMITTEE REPORT-BILL DO PASS		
	2/15	2ND READING PASS	46	4
	2/18	3RD READING PASS	47	2
		TRANSMITTED TO HOUSE		
	2/27	REFERRED TO JUDICIARY		
	3/15	HEARING		
	3/15	COMMITTEE REPORT-BILL CONCURRED		
	3/19	2ND READING CONCURRED	93	3
	3/21	3RD READING CONCURRED	90	7
		RETURNED TO SENATE		
	3/26	SIGNED BY PRESIDENT		
	3/26	SIGNED BY SPEAKER		
	3/26	TRANSMITTED TO GOVERNOR		
	3/29	SIGNED BY GOVERNOR		
		CHAPTER NUMBER 210 EFFECTIVE DATE: 10/01/85		

SB 268 INTRODUCED BY HALLIGAN
REVISE CRITERIA FOR DETENTION OF YOUTH
BY REQUEST OF BOARD OF CRIME CONTROL

	1/28	INTRODUCED		
	1/29	REFERRED TO JUDICIARY		
	2/07	HEARING		
	2/11	COMMITTEE REPORT-BILL PASS AS AMENDED		
	2/13	2ND READING PASS	50	0
	2/15	3RD READING PASS	49	0
		TRANSMITTED TO HOUSE		
	2/27	REFERRED TO JUDICIARY		
	3/20	HEARING		
	3/26	COMM REPORT-BILL CONCURRED AS AMENDED		
	3/30	2ND READING CONCURRED	96	0
	4/01	3RD READING CONCURRED	100	0
		RETURNED TO SENATE WITH AMENDMENTS		
	4/03	2ND READING AMENDMENTS CONCURRED	50	0
	4/05	3RD READING AMENDMENTS CONCURRED	45	0
	4/12	SIGNED BY PRESIDENT		
	4/15	SIGNED BY SPEAKER		
	4/15	TRANSMITTED TO GOVERNOR		
	4/19	RETURNED WITH GOVERNOR'S AMENDMENTS		

Senator Towe wanted to know what a person would do if they were refused a teaching position because their spouse was on the school board in a town where emplyment opportunities were limited. Mr. Erdmann replied a decision would have to be made as to whether it was important enough to forfeit an income so one member of the family could be on the school board. Mr. Erdmann stated the bill is meant to only include spouses of board members and superintendents. The spouse of a school principal could be a teacher in the same district. Tammy Hall reminded the committee there are numerous persons in every community qualified to be a member of the school board.

Senator Galt inquired why SB230 was introduced if it is the same as the bill the Attorney General had deemed invalid. Mr. Erdmann explained that although the bill is virtually the same, SB230 is much more specific. SB230 places marital status under the provision of the law where discrimination is proper for valid reasons.

Senator Tveit closed the hearing on SB230 by stating the neptism statute should be included in the law to provide a school system that works well.

There being no further questions from the committee, the hearing on SB230 was closed.

CONSIDERATION OF SB267: Senator Halligan, sponsor of SB267, opened the hearing by stating the purpose of SB267 is to equalize the exemptions allowed a judgment debtor. Senator Halligan pointed out that while there is a long list of exemptions for married persons, the single man is allowed to retain virtually nothing more than the shirt on his back.

PROPONENTS: Mr. Martin Jacobson, representing Chris Daily of Missoula, Montana, testified that passage of SB267 will solve the discrimination and equal protection problems in the current statute. Mr. Jacobson feels it is unjust that an unmarried person is not able to retain the necessary items to enable him to earn a living.

Senator Towe questioned Senator Halligan as to whether it was his intention to allow a single man the same amount of exemptions as a married couple or only half the amount. It was brought to the committee's attention that if a single man received the same amount of exemptions as a married couple, he would be receiving double the amount he is entitled to. Senator Halligan stated that a single man should receive only the exemptions which one judgment debtor would be entitled to.

Senator Daniels stated it was his belief the entire statute regarding judgment debtors was being reviewed for changes and, perhaps, this bill should not be passed, since the entire statute would more than likely be revised.

Senator Halligan closed the hearing by urging the committee to provide equal protection for the single person.

CONSIDERATION OF SB290: Senator Daniels, sponsor of SB290, informed the committee that SB290 would revoke the use of habeas corpus as part of post-conviction relief. Senator Daniels feels that because the Montana State Prison is located in Deer Lodge, the use of habeas corpus puts an unfair burden on the Powell County District Court. Senator Daniels feels that any reconsideration should be done in the court of original jurisdiction.

PROPONENTS: Mr. Rob Smith, representing the Office of the Attorney General, testified that Habeas Corpus is the more traditional remedy sought by persons who believe they were unjustly sentenced. Many of these cases deal with persons who had deferred or suspended sentences revoked.

Mr. Smith believes the proper place for these cases to be reviewed is in the court where the original trial was held. Mr. Smith believes this will also give the trial judge an opportunity to review and correct any mistakes.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Towe questioned Mr. Smith as to how this would affect a person's right to appeal to federal court. Mr. Smith replied that a Defendant would have to exhaust all state remedies before appealing to federal court; however, the same is true under the current statutes.

ACTION ON SB290: Senator Towe moved that Section 3 of SB290 be deleted and the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SB230: Senator Mazurek asked Senator Pinsoneault if this legislation would create problems in the smaller communities in Montana. Senator Pinsoneault did not think this would be a problem and moved SB230 DO PASS. Mr. Greg Petesch reminded the committee this bill applies to all government agencies. The motion carried.

ACTION ON SB128: Senator Pinsoneault suggested an interim committee be appointed to resolve the differences on SB128.

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/11/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	✓		
Senator Bob Brown	✓		
Senator Bruce D. Crippen	✓		
Senator Jack Galt	✓		
Senator R. J. "Dick" Pinsoneault	✓		
Senator James Shaw	✓		
Senator Thomas E. Towe	✓		
Senator William P. Yellowtail, Jr.	✓		
Vice Chairman Senator M. K. "Kermit" Daniels	✓		
Chairman Senator Joe Mazurek	✓		

ACTION ON SB 245: Mr. Petesch stated the information required in this bill would be available in discovery or in the writ of assistance or writ of attachment. Senator Pinsoneault questioned whether this applied if your judgment came out of justice court instead of district court. Senator Towe responded he thinks there is a reference in the justice court statutes to the rules of civil procedure in district court. Senator Crippen moved SB 245 be recommended DO PASS. The motion carried with Senators Brown, Crippen, Galt, Pinsoneault, and Yellowtail voting in favor and Senators Blaylock, Daniels, Shaw, and Towe voting in opposition.

ACTION ON HB 103: Amendments to HB 103 were distributed to the committee (See Exhibit 1). Mr. Petesch stated the committee has adopted all of the amendments on the attached Exhibit 1 except the last one, which is one Senator Pinsoneault requested be looked into. Senator Towe moved amendment No. 4 be adopted. The motion carried unanimously. Senator Pinsoneault moved HB 103 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Crippen voting in opposition.

ACTION ON SB 267: Mr. Petesch stated Representative Bergene has a comprehensive bill revising the exemptions that has not yet been introduced. Senator Daniels stated the chair would entertain a motion to lay the matter on the table pending introduction of Representative Bergene's bill. Senator Towe stated if we lay this bill on the table, it will effectively be dead due to the close proximity of the transmittal deadline. He believes there is some merit in the bill. Senator Towe moved that SB 267 be recommended DO PASS. The motion carried with Senators Daniels and Galt voting in opposition.

CONSIDERATION OF SB 184: Senator Tom Towe introduced SB 184 due to Senator Joe Mazurek's absence from the hearing. Senator Mazurek was presenting a bill to the State Administration Committee and was unable to present SB 184 on his own behalf. Senator Towe stated this bill simply repeals the sunset provision in the language the legislature adopted last session. The language we adopted last session amended that section because of the law on sovereign immunity. One of the cornerstones of that law is that only general damages will be allowed. That meant only those monetary damages you can put a finger on. The supreme court ruled that was unconstitutional, and we cannot deny the other intangible damages. The 1983 legislature put in a limit of $1 million. It also put in a sunset provision until June 30, 1985. This bill repeals the sunset provision. Senator Towe stated he understands the bill has been working quite well. It has meant an enormous increase in damages paid out. If we took the limit off, we would be paying out a lot more. The feeling of the legislature is that ought to be sufficient. He thinks it would be wise to continue the existing provision by repealing the sunset provision.

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/28/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

STANDING COMMITTEE REPORT

~~January~~ Feb 12 19 55

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 267

first reading copy (white)
color

GIVE UNMARRIED PERSON SAME EXEMPTIONS FROM EXECUTION OF JUDGMENT AS MARRIED.

Respectfully report as follows: That SENATE BILL No. 267

DO PASS

~~XXXXXXXXXX~~

Senator Joe Mazurek Chairman.

Rob Smith, attorney from the Attorney General's Office, testified on behalf of the bill. He said he has worked in the habeas corpus area with the Attorney General's Office. This bill will clarify the law indicating that any action attacking the revocation of a suspended or deferred sentence takes place in the court where the individual was tried. Right now, the law doesn't say anything about this one way or the other. Mr. Smith said their feeling was that the trial court is the appropriate place to have the matter considered because the trial judge is the one who already tried the case. He would be familiar with the facts of the case. In addition, the witnesses usually live in the area of where the trial court is. At present, if the prisoner proceeds in habeas corpus, he has his hearing considered either in the supreme court or in the court at the place of confinement which is Deer Lodge.

There being no further proponents or opponents, Senator Daniels closed.

The floor was opened for questions.

Rep. Eudaily wanted to know why the effective date was stricken from the bill. Senator Daniels said the Senate Judiciary Committee struck this language because they felt no urgency in this area. He said the committee was tired of seeing all these bills with effective dates included.

There being no further questions, hearing closed on SB 290.

CONSIDERATION OF SENATE BILL NO. 267: Senator Mike Halligan, District #29, sponsor of this bill, testified. This is an act providing to unmarried persons the same exemptions from execution of judgment as those granted to persons who are married. Presently, if a married person is sued and the other person gets a judgment against the married person, but he doesn't pay that judgment, and they execute by attaching some of his property, that married person gets all the exemptions currently in the law. However, if the person is single, he is not entitled to any of the same exemptions that a married person is entitled to.

Mark Jacobson, proponent to SB 267, said that the present law states that a single person is only allowed to keep his wearing apparel. He also said it is important that the Federal Bankruptcy Act allows the state the choice to apply their own exemption statutes.

There being no further proponents or opponents, Senator Halligan closed.

The floor was opened to questioning.

Rep. Eudaily wanted to know why the material was deleted on page 7, line 1 of the bill. Senator Halligan said he didn't know.

Rep. Mercer asked about the situations when a person is divorced and has to pay child support, then a lot of these exemptions do not apply because of federal law. That creates another group of people -- those who pay child support and those who do not pay child support which would require two seperate exemptions. Do you think that is an additional group that some day should be addressed, or do you think that discrimination is justified? Senator Halligan responded by saying his guess is that the child support federal laws supercede this. He said there is a rational basis for that distinction.

There being no further questions, the hearing closed on SB 267.

EXECUTIVE SESSION

ACTION ON SENATE BILL NO. 267: Rep. Addy moved that SB 267 BE CONCURRED IN. The motion was seconded by Rep. Miles. The question was called, and the motion carried unanimously. Rep. Montayne volunteered to carry the bill on the floor.

ACTION ON SENATE BILL NO. 290: Rep. Gould moved that SB 290 BE CONCURRED IN. The motion was seconded by Rep. Montayne. Rep. Gould commented that he feels this is an excellent argument concerning the Sentence Review Board. The question was called, and the motion carried unanimously. Rep. Gould offered to carry the bill.

CONSIDERATION OF SENATE BILL NO. 292: Rep. Cobb, District #42, one of the sponsors of the bill, presented the bill in lieu of its chief sponsor, Senator Ted Neuman. Senator Neuman was unable to be at the meeting right then.

Larry Majerus, administrator of the Motor Vehicle Division, Department of Justice, testified as a proponent. This is an act revising and clarifying the Mandatory Liability Protection Law, Mr. Majerus said. He said that most states have to recognize an out-of-state vehicle if they are in conformance with their home state law. This merely clarifies it in the statute.

There being no further proponents or opponents, the floor was opened to questions.

On request of Rep. Montayne, Mr. Majerus explained the language on lines 21 through 24 on page 2. He said this language was developed by the 1983 legislative session in relationship to all the DUI bills that passed. We are merely extending this definition also to the insurance laws.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/15/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			✓
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

March 15, 19 83

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 267

Third reading copy (Blue color)

GIVE UNMARRIED PERSON SAME EXEMPTIONS FROM EXECUTION OF JUDGMENT AS MARRIED

Respectfully report as follows: That Senate Bill No. 267

BE CONCURRED IN

~~DO PASS~~

REP. TOM HANNAH, Chairman.

STATE PUB. CO.
Helena, Mont.

SECRETARY